

### ALABAMA SMALL CLAIMS COURT

The attached packet includes information and forms used by small claim litigants who are not represented by an attorney.

The office of the Circuit Clerk is prohibited, by law, from giving any legal advice. If you need any information, clarification of information that is provided in this packet, or clarification of any legal proceeding before, during or after disposition of your case, you must contact an attorney who practices in Alabama.

It is important to understand, before filing your claim, that if judgment is awarded in your case, it may be very difficult or impossible to collect.

#### Alabama law prohibits this office from giving legal advice.

This information is provided for the purpose of explaining the guidelines and procedures of the Russell County Circuit Clerk in the filing of small claims actions in the District Court and should in no way be construed as legal advice. Should you have any further questions or need additional information, you must seek legal advice from an attorney.

Forms available at: <a href="http://eforms.alacourt.gov">http://eforms.alacourt.gov</a>

You may qualify for free legal help.
Call Legal Services Alabama at 1-866-456-4995

Please read all information carefully before filing a case.

## SMALL CLAIMS COURT COSTS RUSSELL COUNTY, ALABAMA

FILING FEES	\$	
\$1,500.00 & under	70.00	
1,500.01 to 3,000.00	144.00	
Each Additional Plaintiff (\$500.00 cap)	50.00	
(Service by Sheriff in Alabama for one defendant, with st	reet	
address, is included in initial filing fee)		
ADDITIONAL SERVICE FEES		
Each Additional Defendant/Personal Service	15.00	
Service by Certified Mail (add \$.17 for each add. oz)		
Restricted Delivery	10.04	
Non-restricted Delivery	5.54	
Personal Service by Muscogee County Sheriff (per defendant) (Money order only payable to Muscogee County Sheriff)	50.00	
Each Additional Defendant by Process Server	15.00	
SUBPOENA FEES	17.00	
Personal Service (Included in filing fee)		
Certified Mail (see above certified mail fees)		
POST JUDGMENT PROCEEDINGS		
Attachment	35.00	
Execution	35.00	
Process of Garnishment		
Certified Mail on Garnishee	5.71	
Certified Mail on Defendant	10.04	

### **COPIES**

One copy of each pleading is distributed to all parties, or their attorney, in each case. For additional copies, a request must be submitted, in writing, with applicable fees.

\*\*\*All documents must be letter size\*\*\*

#### PERSONAL CHECKS ARE NO LONGER ACCEPTED

We accept cash, local business checks, cashier's checks or money orders made payable

KATHY COULTER, CIRCUIT CLERK 501 14<sup>th</sup> Street Phenix City, AL 36867 334/298-0516

### ALABAMA'S SMALL CLAIMS COURT

The Small Claims Court is a special civil division of the District Court where individuals, as well as businesses, can settle disputes and disagreements. The maximum amount you may sue or be sued for is \$3,000.00. Procedures are simple, informal, and inexpensive. There are no juries and you may appear before the judge with or without an attorney.

#### Should you file a Small Claims Case?

Before you file a claim, you should contact the person(s) or business you plan to sue and attempt to settle your dispute out of court. This effort may save you both time and money.

You should, also, find out if the person(s) or business you plan to sue has any money or assets to pay your claims, if you should win. Otherwise, you may have a difficult time collecting on a court judgment. Remember, it is up to you, not the court, to take further legal action against the person(s) or business if they do not pay the judgment.

#### Who can use Small Claims Court?

An individual who has reached the age of 19, a partnership, or a corporation may file a claim, with or without an attorney. If a partnership files without an attorney, the person representing the partnership must be a partner or employee of the partnership. If a corporation files without an attorney, the person representing the corporation must be an officer or full-time employee of the corporation.

#### How do you file a Small Claims Case?

The case should be filed with the Small Claims Division of the District Court in the county where the person or business you wish to sue lives or has an office. The Court Clerk has this form. **The Court Clerk cannot give you legal advice.** You may have another individual help you complete the forms if you are physically unable to fill them out yourself. Court personnel are not permitted to do this for you.

Once you complete the complaint, you become the "plaintiff" in the case and the person you are suing is the "defendant". It is the responsibility of the plaintiff to provide a good and proper address for each defendant. The complaint cannot be served if this information has not been provided to the Court.

**Filing fees are non-refundable.** You must pay a filing fee at the time the claim is filed. If you cannot afford to prepay this fee, you may complete an Affidavit of Substantial Hardship form. This affidavit must be filed at the time you file your case. If granted by the Judge, court costs will be assessed at the conclusion of the case. You may be required to pay the total costs at that time.

The clerk will assign you a case number and you should use this number whenever you contact the court concerning your case.

#### What happens after the claim is filed?

Once the forms are completed and presented to the Clerk for filing, this office will process the complaint for service on the defendant(s) by the sheriff's department. If you prefer service by certified mail, or some other service type, this should be noted on the complaint. Any applicable service fees must be paid in advance by the plaintiff.

Service dates are not given via telephone. You will be notified of the service date by mail with a computer printout or via email. If the defendant cannot be located at the address that you give within 120 days, the case will be dismissed for lack of service.

If the defendant(s) files an answer of denial, a copy will be mailed to you and the case will be set for trial within four weeks from the receipt of the answer. If the defendant(s) agrees to the complaint, the Judge may enter a consent judgment in favor of the plaintiff against the defendant(s).

In some cases the case may be set for trial for the plaintiff to prove the amount of the damages or amount of claim.

If the defendant(s) fails to file an answer within 14 days, the plaintiff may request a judgment by default.

All parties to a small claims case are encouraged to attempt a settlement agreement prior to trial. All settlement agreements should be in writing and should state who is to pay the court costs. If the defendant(s) does not agree to pay the court costs as part of the settlement, costs are automatically assessed to the plaintiff.

# If a settlement agreement is reached before the trial, the plaintiff must immediately notify the clerk, in writing, so that the trial can be cancelled. Faxes and phone calls are not accepted.

#### What should you do to prepare for the trial?

If an agreement cannot be reached, you assemble all papers, receipts, bills, sales tickets, estimates, photographs, etc., that include information concerning your case.

You should write down the details and facts of the case to assist you in telling your side of the story at the trial.

You may bring any witnesses you feel can help explain your case. If there is any reason to believe a witness will not voluntarily appear, you may ask the clerk to issue a witness subpoena requiring that person to appear. You will be required to furnish a service address and to pay a witness subpoena fee at the time of the request. Requests must be in writing.

#### What happens at the trial?

**BE ON TIME**. Russell County cases are always set on Eastern Standard Time. If you are late, the judge may dismiss your case. If an emergency arises that may prevent you from appearing at the trial, you **MUST** inform the clerk, in writing, as soon as possible and request a continuance (delay) of the trial. The Judge will not continue any case without the consent of all parties if not filed by the Monday prior to your court date.

A trial in Small Claims Court is an informal hearing before the judge. There is no jury. When the case is called, the plaintiff will present his/her evidence and his/her witnesses. The defendant(s) will then present his/her evidence, and call his/her witnesses.

After hearing both sides of the case and looking at the evidence, the judge will make a decision and render a **judgment** based on the law and the facts presented. In some cases, the decision is made while you are before the Court. However, the Judge may take your case under advisement and enter an Order at a later date. You will be mailed a copy of the Judge's order. It is important that all parties maintain a current mailing address and phone number on file with the Circuit Clerk's office.

#### What can you do if you disagree with the Court's judgment?

If you disagree with the decision, you may appeal the case by filing a NOTICE OF APPEAL form with the clerk of the Small Claims Court within 14 days after the date of the judgment. This form may be obtained from the Circuit Clerk's office. Appeal costs must be paid at time your appeal is filed.

You may need the assistance of an attorney if you choose to appeal. The simplified procedures of Small Claims court do not apply in Circuit Court.

#### If you, the plaintiff, win, how do you collect the judgment?

The plaintiff cannot initiate any legal proceeding until the 14 day appeal time has expired. If the defendant(s) does not pay the judgment or make satisfactory arrangements, it is up to the plaintiff to file one of the following actions in an attempt to collect the amount of the judgment:

- Garnishment of Wages--Must include the name and address of the employer. Some employers require that the last 4 digits of the defendant's social security number be stated on the garnishment form. State and Federal law prohibits the garnishment of some income, such as social security. The Clerk's office cannot advise you as to your ability to collect.
- Garnishment of Bank Account--Must include the correct name and address of bank.
- Execution for Levy on Property--Obtain a court order authorizing the sheriff to pick up any property belonging to the defendant(s) and sell it to satisfy the judgment. The property levied cannot be under a recorded mortgage (plaintiff can check with the probate court record room for recordings).

All post judgment actions require an additional filing fee. The clerk can give you the necessary forms: but the method of collection may become involved. It is strongly suggested that you consult an attorney for explanation of collection procedures and to assist you in filing the appropriate forms. The court clerk cannot give you legal advice.

It is, also, important to mention that it is much easier to get a judgment than it is to collect on it. **A judgment is not a guarantee of collection**. If the defendant(s) does not work or own property, or if he/she is self employed, it is very difficult to collect.

If you do not understand any court proceeding, you should contact an attorney for assistance. You have certain legal rights and an attorney can explain these rights to you. **The court clerk cannot give legal advice.** 

#### **DEFINITIONS**

**Plaintiff:** The person who files a claim against another person.

**Defendant:** The person against whom a claim is filed.

**Statement of Claim (Complaint):** The legal paper filed by the plaintiff briefly describing the claim against the defendant.

**Defendant's Answer:** The legal paper filed by the defendant admitting or denying all or part of the claim against him/her.

**Defendant's Counterclaim:** The legal paper filed by the defendant telling the Court and Plaintiff about a claim(s) he has against the plaintiff.

**Judgment:** A final determination by a Judge of the rights and claims of the parties in an action.

#### RUSSELL COUNTY SMALL CLAIMS GUIDE

#### **CASE FILED**

\*SERVICE OF DEFENDANT\*
BY SHERIFF, PROCESS SERVER OR CERTIFIED MAIL

14 DAYS TO ANSWER

DENIAL/TRIAL
AGREE/CONSENT TO JUDGMENT
NO ANSWER/DEFAULT JUDGMENT

ORDER OF JUDGMENT

PARTIES HAVE 14 DAYS TO APPEAL

JUDGMENT BECOMES FINAL 14 DAYS AFTER DATE OF JUDGMENT

The Plaintiff must notify the Court, in writing, prior to court, if the case is settled.

#### **POST-JUDGMENT OPTIONS**

(JUDGMENT MUST BE FINAL/Appeal time expired) FORMS AVAILABLE IN CLERK'S OFFICE

- Garnishment of Wages
   Name and address of employer required
   (many employers require social security number of defendant)
- 2. Garnishment of Bank Account
  Name and address of bank required
  (Account number needed if possible)
- 3. Execution

Description of property needed

#### \*SERVICE OF DEFENDANT\*

The plaintiff will be notified promptly by the Court when there has been a return of service or non-service in each case. It is the responsibility of the Plain tiff to notify the court, *in writing*, of a good and sufficient address. If service is not perfected within 120 days from filing, the case will be forware ded to the Judge for disposition by dismissal without prejudice.

#### **GENERAL INFORMATION**

As a party to the suit, you will be notified, *in writing*, of each and every pleading or court proceeding in your case. This and all inform ation in the Clerk's Office is public record and m ay be accessed from the public computer or by submitting your information request, *in writing*, to: Russell County Circuit Court, Small Claims Division, 501 14<sup>th</sup> St, Phenix City, AL 36867 *OR* faxed to 334/297-6250. You must provide the case number and the style of the case on all requests.

State of Alabama Unified Judicial System

Form SM-1 Rev. 3/95

# STATEMENT OF CLAIM Complaint GENERAL

Case Number

IN THE SMALL CLAIMS COURT OF RUSSELL COUNTY, ALABAMA

\_\_\_\_ VS. \_\_\_\_

Plaintiff	Defendant			
Plaintiff's Home Address	Defendant's Home Address			
Plaintiff's Attorney's Address	Additional Defendant(s) Address(es)			
NOTICE TO EACH DEFEND	ANT – READ CAREFULLY			
YOU ARE BEING SUED IN THE SMALL CLAIMS COURT BY T MADE ANY DECISION IN THIS CASE, AND YOU HAVE THE RIGH	HE PLAINTIFF(S) SHOWN ABOVE. THE JUDGE HAS NOT YET HT TO A TRIAL TO TELL YOUR SIDE.			
HOWEVER, IF YOU, OR YOUR LAWYER, FAIL TO FILL OUT THE ATTACHED ANSWER FORM AND DELIVER OR MAIL IT TO THE CLERK AT THE ADDRESS SHOWN BELOW, SO THAT IT WILL GET TO THE CLERK'S OFFICE WITHIN FOURTEEN (14) DAYS AFTER YOU RECEIVE THESE PAPERS, A JUDGMENT CAN BE TAKEN AGAINST YOU FOR THE MONEY OR PROPERTY DEMANDED IN THE FOLLOWING COMPLAINT. ONCE A JUDGMENT HAS BEEN ENTERED AGAINST YOU, YOUR PAYCHECK CAN BE GARNISHED AND/OR YOUR HOME OR PROPERTY SOLD TO SATISFY THAT JUDGMENT.				
COMPI	LAINT			
I claim the defendant(s) owes the plaintiff the sum of \$	because:			
<ol> <li>Plaintiff also claims from the defendant(s) court costs in the sum of \$ (see note below), plus \$ for interest and \$ for lawyer's fees (only if plaintiff is represented by a licensed, practicing attorney and if the contract or note you signed so provides.)</li> <li>NOTE: The total amount of court costs may be more than this amount when the case is finally settled.         The clerk will inform you of any additional costs at the close of the case.     </li> </ol>				
Clerk's Address:	Plaintiff or Plaintiff's Attorney (signature)  Attorney Code:			
Kathy Coulter Clerk of Court Russell County Judicial Center 501 14 <sup>th</sup> Street	Plaintiff's or Plaintiff's Attorney's Phone Number			
Phenix City, AL 36867	Plaintiff's or Plaintiff's Attorney's E-mail Address			
Telephone Number: 334-298-0516				

#### **INSTRUCTIONS TO THE PLAINTIFF'S**

This is your case, and if you are acting as your own lawyer, you are responsible in seeing that your claim is successfully presented at each stage of the procedure until it is concluded.

The clerk of the court has a brochure which tells you how to handle a Small Claims case. This brochure is free to you on request..

- You must complete one of these forms for each defendant you wish to sue. Each defendant must be described by his/her correct legal name and address (not a post office box). Be as brief as possible but include every important name, date and place
- To start your case you must file the completed form with the clerk assigned to Small Claims cases. The clerk will stamp 2. a copy for you to show that the case has been filed and will insert the number of the case on the front of this form.
- You are responsible for seeing that each defendant receives a copy of this form. If you haven't heard from anyone about the case in about fourteen days, then check with the clerk's office, to make sure that each defendant has been served.
- If any of the defendants ask for a trial you will be notified of the place, the date, and the time. You must be present or your case will be dismissed. You may take a judgment by default fourteen (14) days after the defendant has received a copy of this form, if the defendant fails to file his/her Answer.
- You are responsible to see to the enforcement of any judgment that is awarded to you. The Small Claims brochure will tell you how to go about recovering your money. It is not the responsibility of the court or the clerk to collect the judgment for you.

#### ANY TIME YOU CONTACT THE CLERK ABOUT THIS CASE YOU MUST REFER TO THE CASE NUMBER ON THE FRONT.

INSTRUCTIONS TO SHE	RIFF OR PROCESS SERVER
To Any Sheriff or Any Person Authorized by Rule 4.1(b)(1) or 4. the State of Alabama.	1(b)(2) of the Alabama Rules of Civil Procedure to Effect Service in
You are hereby commanded to serve this summons and a copy	of the Statement of Claim in this action upon the defendant(s) named
and make proper return to this court.	
Date	By
	Clerk
RETURN ON SERVICE:	
Convert on defendent/o) normed	
Served on delendant(s) named	
by delivering a copy of the Summons and Statement of Claim to	him/her in
County, Alabama, on (Date)	,
	Process Server Signature
	Title of Process Server
	d Statement of Claim is initiated upon the request of lant to Rule 4.1.(c) of the Alabama Rules of Civil Procedure.
Date Requested	Date Mailed
Return Receipt Date	By
	Clerk

State of Alabama Unified Judicial System

Form SM-2 (front) Rev. 3/95

# STATEMENT OF CLAIM

(Complaint)

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1 260		mne

, , , , , , , , , , , , , , , , , , , ,	For Spe	cific Property	
IN THE SMALL CLAIMS COURT OF		RUSSELL COUNTY	, ALABAMA
		(Name of County)	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
Plai	ntiff	v	Defendant
	••••		
Plaintiff's Home Address		Defendant's Home Address	
DI 1 1155 A11			
Plaintiff's Attorney's Address		Additional Defendant(s)	
		and Addresses	
	NOTICE TO EACH DEE	ENDANT – READ CAREFULLY	
YOU ARE BEING SUED IN	THE SMALL CLAIMS COURT BY TH	E PLAINTIFF(S) SHOWN ABOVE. THE JUDGE	HAS NOT YET MADE ANY
DECISION IN THIS CASE, AND YO	OU HAVE THE RIGHT TO A TRIAL TO TE	ELL YOUR SIDE.	
AT THE ADDRESS SHOWN BELO	OW, SO THAT IT WILL GET TO THE CLE	ENCLOSED ANSWER FORM AND DELIVER ( ERK'S OFFICE WITHIN FOURTEEN (14) DAYS A	FTER YOU RECEIVE THESE
A JUDGMENT HAS BEEN ENTER	TAKEN AGAINST YOU FOR THE MOI RED AGAINST YOU, YOUR PAYCHEC	NEY OR PROPERTY DEMANDED IN THE FOLL K CAN BE GARNISHED AND/OR YOUR HOME	OWING COMPLAINT, ONCE OR PROPERTY SOLD TO
SATISFY THAT JUDGMENT.			
	CC	DMPLAINT	
1 Digintiff domands right to			
i. Flamin demands right to	possession from the defendant(s)	or the following property.	
		form the defendent (-) the alternation	de a company
		from the defendant(s) as the alternate va	
Plaintiff also claims from	m the defendant the sum of \$ to the present.	for the us	se of this property from
Plaintiff also claims from	the defendant(s) court costs in t	he sum of \$	(see note below), and
\$ for la you signed so provides.)	awyers' fees (only if plaintiff is repre	esented by a licensed, practicing attorney	and if the contract or note
	mount of court costs may be more t	han this amount when the case is finally se	ttlad. The clark will inform
	additional costs at the close of the ca		ttied. The clerk will inform
CLERK'S ADDRESS:			
501 14th Street		Plaintiff or Plaintiff's Attorney (Signature)	
Phenix City, Alabama 30	6867	Attorney Code	
Clerk's Phone No.	334-298-0516		
Olerk 3 i Holle No.	· · · · · · · · · · · · · · · · · · ·	Plaintiff's or Plaintiffs Attorney's Phone N	umber
(See instructions on the Back)  Date of Filing			
(See monuchons on the Back	J	Date of Filling	

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and make proper return to this court.	
Date	By
	Clerk
RETURN ON SERVICE:	
Convert on defendent/o) normed	
Served on delendant(s) named	
by delivering a copy of the Summons and Statement of Claim to	him/her in
County, Alabama, on (Date)	,
	Process Server Signature
	Title of Process Server
	d Statement of Claim is initiated upon the request of lant to Rule 4.1.(c) of the Alabama Rules of Civil Procedure.
Date Requested	Date Mailed
Return Receipt Date	By
	Clerk

State of Alabama **Unified Judicial System** 

# APPLICATION AND AFFIDAVIT FOR

**Case Number** 

Form (	C-25A Rev. 6/07	ENTE	KY OF DE	FAULT	JUDGMEN	<u>I</u>
IN TH	E		COL	IRT OF		, ALABAMA
	(Circui	it or District)			(Name of 0	County)
			\	/		
		Plaintiff				efendant
	affiant, request that the enter a default judgmer answer, or otherwise de	it against the				Rules of Civil Procedure (ARCP) e defendant's failing to plead,
	e affiant,				, being du	ıly sworn, states as follows:
	That the defendant was se	J			of Claim/Complaint on	(date)
3.	That more than FI days Claim/Compliant.				•	•
4. 5.	That the defendant has fa That this affidavit is execu default judgment against Claim/Complaint.	ted by the affia the defendant	ant in accordance wit and the defendant's	th Rule 55(b), AF failing to answe	RCP, for the purpose of r or otherwise defend ag	enabling the plaintiff to obtain a gainst the plaintiff's Statement of
	Chapter 19, Title 5.	is not in mi		, and there has t	peen no violation of the I	provisions of Ala. Code 1975,
	Judgment Conditions:			ons.		
9.	That the amount of money	•	•			
			_, which is to be dete_	ermined as follov	WS:	
	Interest \$		_			
	Attorney Fee \$ (If provided by contract		_ (if requesting attor	rney's fees, it mu	ust be determined by the	; judge, not the clerk).
	defendant in the Statemen The affiant requests entry from To and Subscribed Bel	of judgment:	nplaint.)  By the Court  By the Clerk	Signature of	Affiant:	f not represented by an attorney):
Da	te:					
				City	State	Zip Code
Off	icer's Signature	Т	itle	Name of Atto	•	
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				Business Ad	dress of Attorney:	
				City	State	Zip Code
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	affidavit above.	endered agair	ist the defendant and	·	Ů .	on of the property sworn to in the
Date				Judge/Clerk		
I he	ereby certify that a copy of thi t, by first class mail, postage	s Application, A	Affidavit, and Entry of arties who are not in de	Default Judgment		
* Sepa	55, ARCP arate form shall be compl					ant numericant to Disk 55(h) ADOD
	suant to Ala. Code 1975, § inal – Court File		y – Plaintiff		eeking a default judgm Copy - Defendant	ent pursuant to Rule 55(b), ARCP.

# IN THE SMALL CLAIMS COURT OF RUSSELL COUNTY, ALABAMA

	<b>,</b>	*	
Plaintiff(s),			
VS.		* Case No	
		*	
Defendant(s).	,	•	
	_		
	<u>N</u>	<u>MOTION</u>	
Comes no	w		, and moves this
Honorable Court			
	Continue case		Dismiss case
	Amend complaint		Amend judgment
	Enter consent judgr	nent	Reinstate case
	Set aside judgment		
for the following I	reason(s):		
This	day of		 , 20
		Signature	
Name (PRINT)			
Mailing Address			
E-Mail address			
Telephone/Cell Ph	one		